

REAL ESTATE & FACILITIES FEDERAL ACQUISITION REGULATION SUPPLEMENT

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

SUBPART 201.1—PURPOSE, AUTHORITY, ISSUANCE

201.101 Purpose.

The Real Estate and Facilities FAR Supplement (RE&FFARS) is issued by authority of the Director, Real Estate and Facilities Directorate, Washington Headquarters Services (WHS). It implements and supplements the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS).

201.104 Applicability.

The FAR, DFARS, and RE&FFARS are applicable to all offices within the Real Estate & Facilities (RE&F) Directorate that are involved with the acquisition of supplies and services using appropriated funds.

201.105 Issuance.

201.105-1 Publication and code arrangement.

The Policy & Contract Review Branch is responsible for the publication of the RE&FFARS and providing copies to users within RE&F.

201.105-2 Arrangement of regulations.

(a) *General.* The arrangement and numbering of the RE&FFARS conforms to the FAR and DFARS.

(c)(2) *References and citations.* This Supplement shall be referred to as the RE&FFARS. Any numbered division may be cited as "RE&FFARS" followed by the division number. Thus, this paragraph would be cited as "RE&FFARS 201.105-2(c)(2)." Numbered divisions within the RE&FFARS with a suffix in the "90" series contain subject matter that is related to but not contained in a FAR or DFARS numbered division. Omission from the RE&FFARS of a numbered division that appears in the FAR or DFARS indicates that there is no additional coverage in the RE&FFARS.

SUBPART 201.2—ADMINISTRATION

201.201 Maintenance of the FAR.

201.201(S-90) Maintenance of the RE&FFARS.

(a) The Policy & Contract Review Branch shall maintain the RE&FFARS. All revisions to the RE&FFARS will be prepared by the Policy & Contract Review Branch and to the extent possible be coordinated

with other offices within the Real Estate and Facilities Contracting Office. Proposed revisions to the RE&FFARS shall be submitted to the Policy & Contract Review Branch. The RE&FFARS and any amendments will be issued under the signature of the Director, Real Estate & Facilities Directorate, or designee.

(b) Amendments to the RE&FFARS will be made by a numbered Policy & Contract Review Branch Acquisition Letter, and will provide replacement pages or revised files if the RE&FFARS is provided electronically. All revisions to the RE&FFARS shall contain an effective date.

SUBPART 201.3—AGENCY ACQUISITION REGULATIONS

201.302 Limitations.

RE&F contracting team leaders may develop local procedures, guidance, handbooks, etc., provided that such guidance does not conflict with or unnecessarily duplicate coverage in the FAR, DFARS, this supplement, or other DOD policies. A copy of any such guidance shall be provided to the Policy & Contract Review Branch. If requested, the Policy & Contract Review Branch will develop or assist in developing local guidance.

201.304 Agency control and compliance procedures.

(a) Any requests for approvals that are required by this section shall be prepared on REFCO Form 43 and coordinated through the Policy & Contract Review Branch

SUBPART 201.4—DEVIATIONS FROM THE FAR

201.402 Policy. (DFARS)

(3) Contracting Officers shall submit all justifications for individual and class deviations to the Policy & Contract Review Branch for coordination. The approval authority is the Director, Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology), USD(A&T)DP for all class deviations and the five categories of individual deviations under DFARS 201.402(1)(i). For other individual deviations, the approval authority is the Director, RE&F.

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SUBPART 201.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

201.601 General.

The "Senior Procurement Executive" for RE&F procurement functions under the FAR and DFARS is the Director, Defense Procurement. The authority to act as the Head of the Contracting Activity (HCA) for the Washington Headquarters Services (WHS) has been delegated to the Director, WHS. This authority is further delegated to the Director, RE&F. The Director, RE&F Contracting Office is the HCA in the absence of the Director, RE&F.

201.601-90 Solicitation and contract review and approval requirements.

201.601-90-1 General.

(a) The Contracting Officer, prior to submission for higher-level review and prior to signature, shall review every proposed contracting action. The Contracting Officer is responsible for ensuring that a quality purchase is made, in terms of accuracy, completeness, judgment, and responsiveness to customer requirements. Documentation supporting the contract action must be sufficiently detailed to allow reconstruction of the significant events taken during the life of the contract action.

(b) The review and approval requirements set forth below are in addition to any reviews required elsewhere in the FAR and DFARS, i.e., small business, competition, undefinitized actions, etc. In determining whether a contract action meets the review/approval dollar thresholds, the maximum estimated or actual value, including the value of any options, shall be used.

201.601-90-2 Review and approval procedures.

(a) *Simplified acquisitions and delivery orders.* Contracting Officers are responsible for ensuring that a valid purchase request exists and simplified acquisition procedures and delivery/task orders are properly used.

(b) *Prebid Reviews.* Statements of work, statements of objectives, performance work statements and related specifications and drawings for contract actions with an estimated value of \$100,000 and up (excluding Architecture/Engineering plans and specifications) shall

be submitted to the contract review board and Deputy Director for review. Ninety five percent submittals received from Architecture/Engineering firms for review shall also be submitted for review.

201.601-90-3 Contract review board.

(1) The Contract Review Board (CRB) shall provide contract document review support for the purpose of enhancing quality control and compliance with applicable regulations. The Board will be composed as follows: Chairperson, Director, Real Estate and Facilities Contracting Office; Alternate Chairperson, Deputy Director, Real Estate and Facilities Contracting Office; Members, Chief, Policy and Contract Review Branch, and Procurement Analyst, Policy and Contract Review Branch. The Cost Price Analyst shall serve as a member of the CRB for actions specifically identified by the Chairperson or Alternate Chairperson.

(2) CRB review shall be accomplished prior to reproduction and issuance of the documents/actions listed below for the thresholds indicated.

| ACTION DESCRIPTION | THRESHOLD |
|--|-------------------|
| Solicitations/Contract Awards Negotiated Delivery Orders | Over \$500,000 |
| Supplemental Lease Agreements | Over \$200,000 |
| Two-Step Sealed Bid Technical Proposals and IFB | All Dollar Values |
| Modifications | Over \$200,000 |
| All Source Selection Documents | All dollar values |
| Commercial Purchase Orders that include evaluation criteria | Over \$500,000 |
| Letter Contracts | All dollar values |

(a) The Policy & Contract Review Branch may either conduct a solicitation and Preaward Review or issue a waiver for review. CRB comments shall be documented on REFCO Form 6, Contract Review Board. The contract specialist and/or Contracting

Officer,
prior to legal review and contract award or document

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issue, shall resolve all CRB review comments. Comments requiring further resolution; i.e., "open" review comments shall be taken up with the CRB Chairperson for resolution. The Chairperson shall consult with other CRB members as necessary to resolve open comments.

(b) Use REFCO Form 4, Contract Review Board Log, to log actions in and out of the Policy and Contract Review Branch. Use REFCO Form 3, Contract Review Routing Record, to document the required signatures.

201.601-90-4 Postaward review.

The Policy & Contract Review Branch, in conjunction with its Acquisition Assistance Reviews, will periodically conduct postaward reviews on selected simplified acquisitions and large purchase actions. Results of the postaward reviews will be provided to all Contracting Officers in the affected offices. The Contracting Officers shall, in turn, make them available to all contract specialists.

201.601-90-5 Acquisition policy review and advice.

(a) In addition to the reviews above, Contracting Officers are required to obtain review by the Policy & Contract Review Branch for the actions listed below. The Policy & Contract Review Branch may waive the review requirements on a case-by-case basis.

(1) Deviations from the FAR or DFARS policy, provisions, or clauses.

(2) Proposed responses to Congressional, General Accounting Office or Inspector General inquiries that may involve acquisition policy considerations.

(b) Contracting Officers are encouraged to seek the advice of the Policy & Contract Review Branch in all other matters where there is a question of acquisition policy and procedures, or when policy interpretation or application of acquisition regulations is needed.

201.601-90-6 Legal review and advice.

(a) Contracting Officers are required to obtain legal review and advice from the WHS Office of General Counsel for the actions below. Counsel may waive the review requirements on a case-by-case basis.

(1) Solicitations and proposed contract awards exceeding \$100,000.

(2) Modifications (including supplemental lease agreements) exceeding \$100,000, except for:

(i) administrative modifications that do not effect price, quantity, quality, or delivery.

(ii) modifications to exercise pre-priced options.

(iii) lease modifications effecting escalation and real estate tax adjustments.

(3) Mistakes in offers/bids.

(4) Protests, disputes, claims, and appeals.

(5) Proposed responses to Congressional, General Accounting Office, Inspector General inquiries that may involve legal considerations.

(6) Recommendations for debarment or suspension of a person or contractor.

(7) Cancellation of an Invitation for Bid after opening.

(8) Offers that indicate a contingency fee has been or may be paid.

(9) Novation and Change-of-Name Agreements.

(10) Tax issues.

(11) Proposed termination actions and related issues.

(12) Non-responsibility determinations.

(13) Interagency Agreements, including Economy Act Agreements.

(14) Awards to other than the apparent low bidder.

(15) Proposed Ratification Actions.

(b) Contracting Officers are encouraged to seek the advice of legal counsel in all other matters where there is doubt over the legal sufficiency of an action, or where legal interpretation or application of laws and regulations is required. Use REFCO Form 5, Office of General Counsel Review Record, to request and document legal opinions.

201.602 Contracting Officers.

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201.602-1 Authority.

(a) Individuals other than Contracting Officers may be delegated local buying authority to use the Government-wide Commercial Purchase Card.

(b) Contracting Officers may designate individuals who can place orders under blanket purchase agreements or delivery orders

201.602-2 Responsibilities. (DFARS)

201.602-2-90 Contracting Officer's Representatives (CORs) within RE&F.

(a) Contracting Officers may designate CORs as described at DFARS 201.602-2. No individual shall be designated a COR unless he or she has had, or is scheduled for, COR training. The Policy & Contract Review Branch will provide details on courses and schedules. Responsibilities of the COR may vary depending on the contract and individual circumstances, but shall include the following:

(1) Maintain a copy of the contract, including modifications, and become familiar with the terms and conditions.

(2) Advise the Contracting Officer of any delay or problem with performance.

(3) Assist in meeting the Government's contractual obligations, such as arranging for timely inspection/acceptance of deliverables, or providing Government-furnished materials and facilities.

(4) Advise the Contracting Officer of any suspected occurrence of fraud, waste, or abuse.

(5) Notify the Contracting Officer of acceptability of deliverables.

(6) Provide technical assistance to the Contracting Officer within the scope of the contract.

(7) Forward all contractual documentation to the Contracting Officer upon completion of the contract.

(b) CORs are not authorized to do the following:

(1) Take any action that establishes or modifies a contractual agreement involving price, quantity, quality, or delivery.

(2) Issue start or stop work instructions to the contractor.

(3) Accept deliverables not provided for in the contract.

(4) Issue a decision under the Disputes clause.

(5) Provide any information to the contractor that may give the contractor an advantage in a future procurement.

(c) The Contracting Officer shall provide a copy of each COR designation to the Policy & Contract Review Branch. The Policy & Contract Review Branch shall maintain a current listing of CORs.

201.602-3 Ratification of unauthorized commitments.

(b) *Policy.* (1) Unauthorized commitments made by persons without proper contracting authority are considered serious misconduct, and may result in disciplinary action. Generally, the Government is not bound by unauthorized commitments nor are all unauthorized commitments ratifiable. The Contracting Officer or the employee's supervisor must report irregularities suspected of fraud or other criminal offenses immediately to the Director, RE&F Contracting Office. The Director may seek the advice of the WHS Office of General Counsel before referring the matter to the Office of the DOD Inspector General with a request for a complete investigation.

201.602-3(S-90) Ratification procedures.

(a) *For actions up to the micropurchase acquisition threshold.* (1) The individual who made the unauthorized commitment shall prepare a request for ratification using REFCO Form 7, Ratification Action Summary. The request shall include a statement of facts addressing the incident, identifying the benefit obtained and providing the reason why normal procurement procedures were not followed. The REFCO Form 7, with Page 1 fully completed, shall be forwarded to the Director, RE&F Contracting Office.

(2) The Director, RE&F Contracting Office will assign the ratification action to a Contracting Officer for processing.

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(3) After obtaining WHS Office of General Counsel review of the ratification action and supporting documentation, the Contracting Officer shall complete the appropriate sections of REFCO Form 7 and forward the complete package to the Director RE&F Contracting Office. After review, the Director RE&F Contracting Office will either ratify the request or direct other disposition by completing Part VIII of REFCO Form 7. The file will then be returned to the Contracting Officer for preparation of a purchase order, modification, or other appropriate action.

(b) *For actions over the micropurchase acquisition threshold.* (1) The individual who made the unauthorized commitment shall prepare a request for ratification and forward it to his/her supervisor. The request shall include a written statement of facts addressing the incident, including reasons why normal procurement procedures were not followed, what bona fide Government requirement necessitated the commitment, the value of any benefit obtained, and any other relevant information regarding the commitment. In addition to the statement, all documents related to the transaction, including invoices, shall be provided. In less complex actions, REFCO Form 7, Ratification Action Summary, may be used for this purpose.

(2) The supervisor of the employee who made the unauthorized commitment shall review the statement and supporting documentation and shall forward the information to the cognizant Contracting Officer, along with a statement that:

(i) Recommends whether or not the action should be ratified; and

(ii) Describes the actions that will be taken to prevent a recurrence of unauthorized commitments.

(3) The Contracting Officer shall review the documentation and prepare for the ratifying official a statement of facts addressing the limitations of the FAR 1.602-3(c), and recommend whether or not the action should be ratified. If ratification is not recommended, alternatives should be proposed.

(4) The Contracting Officer shall forward the recommendations and supporting documents to the WHS

Office of General Counsel through the Policy & Contract Review Branch and the Director, RE&F Contracting Office. After the Contracting Officer has resolved all comments, the ratification request shall be sent to the Director, RE&F for consideration. The Director, RE&F will either ratify the action or direct other disposition in writing, and will return the documents to the Contracting Officer for appropriate action. The Contracting Officer shall provide a copy of the final decision to the Policy and Contract Review Branch.

(i) The Policy & Contract Review Branch shall retain a copy of all ratification requests and final decisions, and shall develop corrective policies and procedures as required. The REFCO Form 8, Ratification Log, shall be used to maintain a record of ratifications.

201.603 Selection, appointment, and termination of appointment.

201.603-1 General.

The HCA will select, appoint, and terminate the appointment of Contracting Officers, based upon the standards set forth in the DOD 5000.52-M, the RE&F Contracting Officer Warrant Program, and recommendations of the Director or Deputy Director of the Real Estate and Facilities Contracting Office

201.603-2-90 Real Estate and Facilities Contracting Officer Warrant Program.

(a) The purpose of this program is to ensure that qualified individuals are appointed as Contracting Officers when an organizational need occurs. Factors to assess in determining an organizational need include the volume of contracting actions, the complexity of the work, the type of work, and the average dollar value of the work.

When an organizational need is present, supervisors may nominate qualified individuals for appointment as Contracting Officers. All nominations and supporting documentation shall be forwarded to the Policy & Contract Review Branch for review.

(b) Individuals may be warranted at a Basic, Intermediate, or Senior level as described below. Within each level, additional limitations on contracting authority,

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such as dollar amount, type of actions permitted, etc., may be set forth to tailor the Contracting Officer's authority to the organizational need. Candidates must meet the experience, training, and education requirements set forth in the DOD Manual 5000.52-M, Career Development Program for Acquisition Personnel, DFARS 201.603-2, and the most current issue of the Policy & Contract Review Branch Policy Letter entitled "Mandatory Department of Defense Training for Acquisition Workforce Personnel."

(1) Basic level warrant grants contracting authority for actions not exceeding the simplified acquisition threshold.

(2) An Intermediate level warrant grants contracting authority for actions up to and including \$500,000.

(3) A senior level warrant grants contracting authority for actions exceeding \$500,000.

(c) Selection. (1) Once the organizational need is identified, the supervisor shall be responsible for nominating qualified candidates for appointment as contracting officers. If requested by the supervisor, the candidate will prepare a qualification statement. The qualification statement should include information about the candidate's current and previous positions, a description of the work performed, the educational background, and contracting training courses completed.

(2) The supervisor will review the qualification statement to determine whether the candidate has the necessary ability to perform the function. If the candidate is judged to have the ability, the supervisor will prepare an REFCO Form 1, Contracting Officer Appointment Request, and submit it to the Policy & Contract Review Branch for processing to the HCA through the Director/Deputy Director of the Real Estate and Facilities Contracting Office for approval by the HCA. The Request for Appointment shall affirm the need for a Contracting Officer, affirm that the candidate meets applicable experience, training and education requirements, identify the warrant level, and indicate any dollar or other limitations.

(3) The Policy & Contract Review Branch will review the application and forward it to the HCA for appointment. Upon approval by the HCA, the Policy & Contract Review Branch will forward a SF 1402,

Certificate of Appointment, to the employee. The employee shall display the Certificate of Appointment at his or her work location. The Policy & Contract Review Branch will maintain a copy of the SF 1402 and the

request package while the SF 1402 is validated and for three years after termination of the appointment. The Policy & Contract Review Branch shall maintain an REFCO Form 2, Contracting Officer Warrant Log, with a current listing of RE&F Contracting Officers and their dollar and other limitations.

(4) Changes to the warrant level or other limitations of the Contracting Officer's appointment are made at the sole discretion of the HCA.

(5) A copy of each warrant shall be forwarded to Civilian Personnel for inclusion in the Official Personnel Folder. A copy shall also be provided to the budget and finance offices.

201.603-4 Termination.

The HCA is the official who will terminate Contracting Officer appointments. Contracting Officers whose appointments are terminated will be provided a written notice stating the reasons and establishing an effective date of the termination. A copy of the termination shall be forwarded to Civilian Personnel for inclusion in the individual's Official Personnel File. Copies shall also be forwarded to the Policy and Contract Review Branch and the budget and finance offices.

SUBPART 201.7—DETERMINATIONS AND FINDINGS

201.703 Class determinations and findings.

(b) Prior to execution, the Policy & Contract Review Branch shall review all class determinations and findings. Upon execution, a copy of the class determinations and findings shall be provided to the Policy & Contract Review Branch.